IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7859 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PALITANA MUNICIPALITY

Versus

THAKATHAGADH MANGALBHUVAN TRUST

Appearance:

MR DD VYAS for Petitioner

MR RASHEED QURESHI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 18/04/2000

ORAL JUDGEMENT

I have heard Mr. D.D.Vyas, learned counsel appearing on behalf of the petitioner as instructed by Mr. Daxesh Mehta. I have also heard Ms. B.R.Gajjar, learned Assistant Government Pleader appearing on behalf

of the State respondent.

Learned counsel for the petitioner submitted that in earlier bunch of writ petitions, a common order was passed by this court on 8th April, 1986 directing the State Government to consider the application of the applicants of those writ petitions regarding exemption from payment of education cess. It was further directed by this court that before passing the order of exemption, the Government should also hear the Palitana Municipality. A further direction was also given to the State Government to supply copies of the applications to the Palitana Municipality as may be submitted by the petitioners of those writ petitions. Learned Counsel submitted that the Government, before issuing exemption order dt.8/3/1988, called for certain documents from the Municipality but the Municipality was not heard before the aforesaid exemption order was passed. Learned counsel further submitted that if the petitioner Municipality had been given an opportunity of hearing the case, the Municipality could have shown with the documents that the respondent no.1 Trust do not fulfil conditions for exemption from payment of education cess. The learned counsel consequently submitted that a serious prejudice has been caused to the petitioner Municipality by not hearing before exemption order was passed by the Government. Learned counsel has drawn my attention to the notification No. ECA-1063/7718-TH, dated 24th December, 1963 issued by the Government and submitted that in fact the respondent no.1 trust is realising money from the pilgrims staying in the Guest Houses, and therefore, they fall under Explanation A of the said notification. It is further submitted by the learned counsel for the petitioner that the trust is realising rent by giving on lease the different shops, and therefore, they should not have been exempted from payment of the education cess. Learned counsel also submitted that if such trusts are exempted from payment of education cess, the Municipality would suffer monitory loss and it would be too difficult to run the administration of the Municipality.

I agree with the arguments advanced by the learned counsel appearing for the petitioner because since the petitioner Municipality had not been given an opportunity of hearing before passing the order of exemption, I am of the view that they should be given a chance to represent their case and to show before the Government authority that the trust do not entitle to seek exemption from payment of education cess. Having regard to the facts of the case as stated above and in

view of the direction issued by this court on 8th April, 1986 in a bunch of writ petitions i.e. Special Civil Application No. 164 of 1986 and other analogous petitions, I am of the view that the Palitana Municipality should be heard before passing any order of exemption from payment of education cess by the respondent no.1 trust. Since the order of exemption passed by the Government on 8th March, 1988 (Annexure :E to the petition) had not been passed after hearing the petitioner Municipality as directed by this court in a bunch of writ petitions on 8th April, 1986, I am of the view that the said notification dt. 8th March, 1988 (Annexure: E to the petition) cannot be said to have been passed by the Government in accordance with the directions issued by this court, and therefore, the said notification dt. 8th March, 1988 is liable to be quashed. Accordingly the notification dt. 8th March, 1988 granting exemption to the respondent no.1 trust is hereby quashed. The State Government is hereby directed to consider afresh the question of granting exemption to the respondent no.1 trust after hearing the petitioner Municipality as well as Thakathgadh Mangalbhuvan Trust -respondent no.1. This should be done as expeditiously as possible, preferably within two months from the date of receipt of order of this court. A copy of this order may be sent to the Secretary, Urban Development & Urban Housing Department, Government of Gujarat -respondent no.2 immediately.

With the aforesaid direction and observation, the writ petition is disposed of. Rule made absolute to the aforesaid extent only. In the facts of the case, I make no order as to costs.

Date: 18/4/2000. (P.K.SARKAR, J.)
ccshah